

REMARKS

Claims 7 and 16 have been rejected under 35 U.S.C. §103(a) as unpatentable over Morikawa (U.S. Patent No. 6,138,638) in view of Hochstrasser et al (U.S. Patent No. 6,990,954). In addition, Claims 8-15 and 17-25 have been rejected as unpatentable over the same two references, and further in view of Oosuga et al (U.S. Patent No. 4,596,220). However, for the reasons set forth hereinafter, Applicants respectfully submit that the foregoing grounds of rejection cannot be maintained.

The Hochstrasser et al reference does not constitute prior art with respect to the present application, because its effective date as a reference under 35 U.S.C. §102(e)(2) is its PCT Publication Date, which is April 24, 2003. The priority date for the present application is April 9, 2003, which precedes the effective date of Hochstrasser et al as a reference. Accordingly, with the last amendment, Applicants submitted a certified translation of the priority document, thereby perfecting the claim of priority.

In response to these observations, the final Office Action states that the applicant is mistaken with regard to the argument concerning priority, referring in particular to 35 U.S.C. §119, as well as MPEP 700, generally. Applicants note in this regard, however, that 35 U.S.C. §119 has no bearing on the effective date of the Hochstrasser et al patent as a reference. It does, however, secure for the

Applicants the priority date of April 9, 2003 based on German patent application number DE 103 16 113.9.

It is unclear to Applicants exactly what significance is attributed to the citation in the Office Action to MPEP Part 700. However, Applicants refer in particular to 35 U.S.C. §102(e)(2) as well as MPEP §706.02(a) II.B (at pages 700-25 and 26) and MPEP §706.02(f)I, all of which establish that the effective date of the Hochstrasser et al patent as a reference is April 24, 2003.

35 U.S.C. §102(e)(2) states,

“an international application filed under the treaty defined in §351(a) shall have the effects for the purpose of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language”.

In this instance, the International Patent Application PCT/DE 02/02685 was in German.

Accordingly, as provided in 35 U.S.C. §102(e)(2), it has no §102(e) date, and is effective as a reference only as of its publication date which in this case was April 24, 2003.

The latter conclusion is supported by MPEP §706.02(a)II.B, which states that:

“Under revised 35 U.S.C. §102(e), an international filing date which is on or after November 29, 2000 is a United States filing date if the international application designated the United States and was published by the World Intellectual Property Organization (WIPO) under the Patent Cooperation Treaty (PCT) Article 21(2) in the English language.”

In addition, the same section also provides:

“International applications which: (1) were filed prior to November 29, 2000, or (2) did not designate the U.S., or (3) were not published in English under PCT Article 21(2) by WIPO, may not be used to reach back (bridge) to an earlier filing date through a priority or benefit claim for prior art purposes under 35 U.S.C. §102(e)”.

Finally, the conclusion that the effective date of the Hochstrasser et al is April 24, 2003 is also confirmed by the table contained in MPEP §706.02(f)(1), a copy of which is attached hereto (Attachment I), with the pertinent blocks highlighted. A copy of the first two pages of International Patent Application PCT/DE 02/02685 is also attached hereto (Attachment II), showing that it was published in German, not in English.

Accordingly, Hochstrasser et al is not a reference against the present application. Therefore, the rejection of all claims in this application based on Morikawa in view of Hochstrasser et al cannot be maintained.

For the sake of completeness, Applicants incorporate all of the Remarks contained in the April 29, 2008 amendment, at pages 8 through 11.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and

Serial No. 10/552,166
Response to Final Office Action Dated: October 23, 2008
Final Office Action dated: July 25, 2008
Attorney Docket No. 095309.56877US

please charge any deficiency in fees or credit any overpayments to Deposit
Account No. 05-1323 (Docket # 095309.56877US).

Respectfully submitted,



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Attachments: MPEP §706.02(f)1; and
First 2 pages of Int'l Patent Application PCT/DE 02/02685

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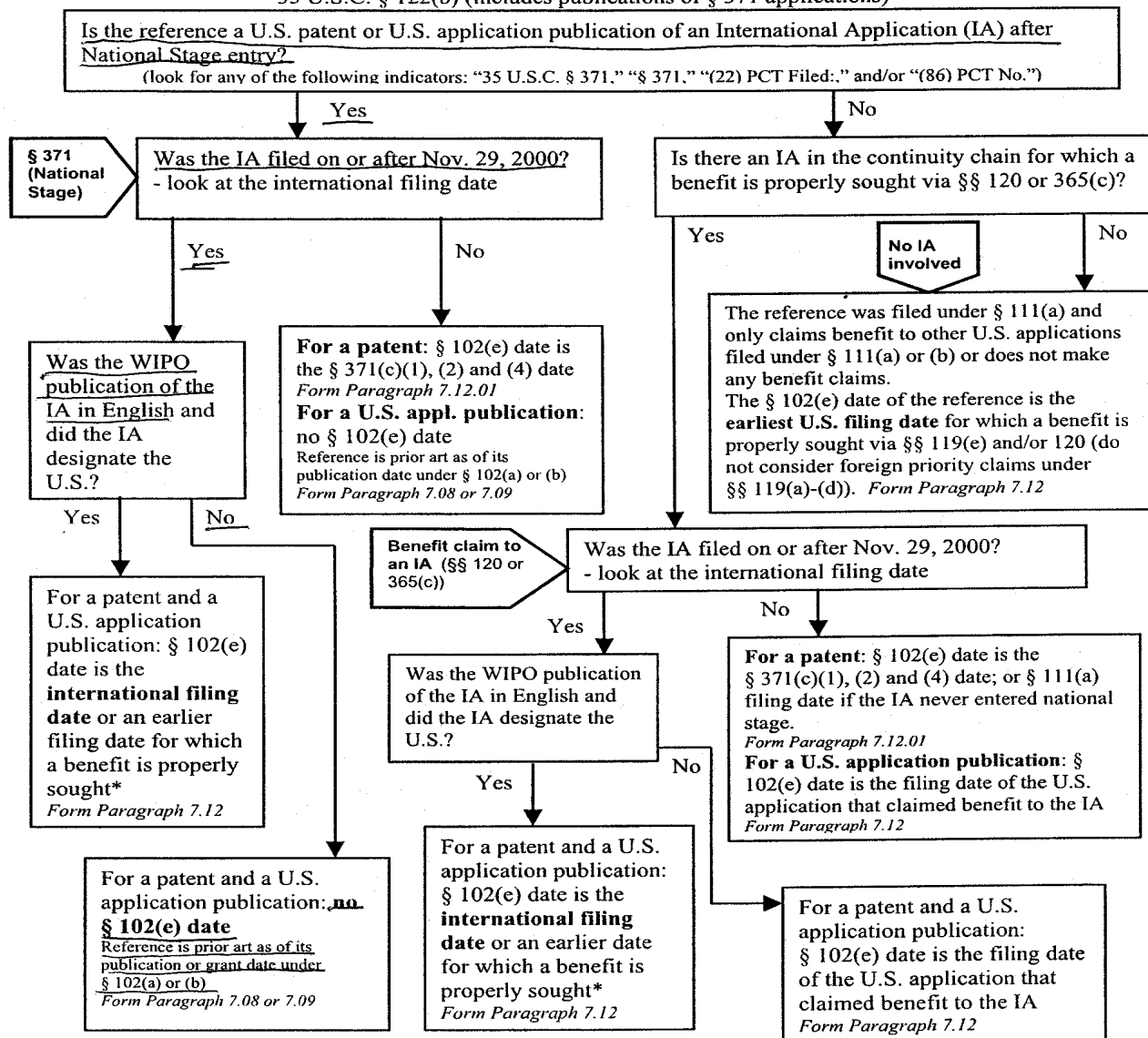
706.02(f)(1)

MANUAL OF PATENT EXAMINING PROCEDURE

III. FLOWCHARTS

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FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart I: For U.S. patent or U.S. patent application publication under
35 U.S.C. § 122(b) (includes publications of § 371 applications)



* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

(19) Weltorganisation für geistiges Eigentum
Internationales Büro



Attachment II



(43) Internationales Veröffentlichungsdatum
24. April 2003 (24.04.2003)

PCT

(10) Internationale Veröffentlichungsnummer
WO 03/033891 A1

(51) Internationale Patentklassifikation⁷: **F02D 37/02**,
41/14

(21) Internationales Aktenzeichen: PCT/DE02/02685

(22) Internationales Anmeldedatum:
20. Juli 2002 (20.07.2002)

(25) Einreichungssprache: Deutsch

(26) Veröffentlichungssprache: Deutsch

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101 49 475.0 8. Oktober 2001 (08.10.2001) DE

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(81) Bestimmungsstaaten (national): JP, US.

(84) Bestimmungsstaaten (regional): europäisches Patent (AT,
BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR,
IE, IT, LU, MC, NL, PT, SE, SK, TR).

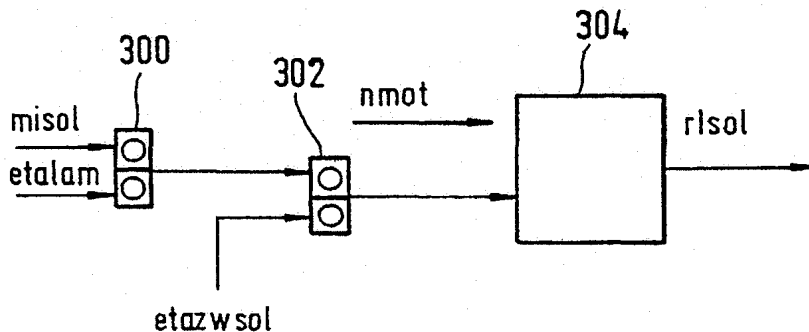
Veröffentlicht:

— mit internationalem Recherchenbericht

Zur Erklärung der Zweibuchstaben-Codes und der anderen
Abkürzungen wird auf die Erklärungen ("Guidance Notes on
Codes and Abbreviations") am Anfang jeder regulären Ausgabe
der PCT-Gazette verwiesen.

(54) Title: METHOD, DEVICE AND COMPUTER PROGRAMME FOR CONTROLLING AN INTERNAL COMBUSTION ENGINE

(54) Bezeichnung: VERFAHREN UND VORRICHTUNG SOWIE COMPUTERPROGRAMM ZUR STEUERUNG EINES VERBRENNUNGSMOTORS



(57) Abstract: The invention concerns a method, a device and a computer programme for controlling an internal combustion engine, which use a torque model for calculating real quantities and/or control quantities. To calculate a torque model, the essential part of combustion, which corresponds to the angle whereat a certain part of combustion energy is transformed, is taken into account.

(57) Zusammenfassung: Es werden ein Verfahren und eine Vorrichtung sowie ein

Computerprogramm zur Steuerung eines Verbrennungsmotors vorgeschlagen, wobei im Rahmen der Berechnung von Istgrößen und/oder Stellgrößen ein Momentenmodell Verwendung findet. Dabei wird im Rahmen der Momentenmodellberechnung der Verbrennungsschwerpunkt berücksichtigt, welcher den Winkel darstellt, bei dem ein gewisser Anteil der Verbrennungsenergie umgesetzt ist.

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.0 Verfahren und Vorrichtung sowie Computerprogramm zur Steuerung eines Verbrennungsmotors

Stand der Technik

.5 Die Erfindung betrifft ein Verfahren und eine Vorrichtung sowie ein Computerprogramm zur Steuerung eines Verbrennungsmotors.

.0 Aus der DE 42 39 711 A1 (US-Patent 5,558,178) ist zur Steuerung eines Verbrennungsmotors bekannt, einen Sollwert für ein Drehmoment des Verbrennungsmotors in eine Stellgröße zur Beeinflussung der Luftzufuhr zum Verbrennungsmotor, zum Einstellen des Zündwinkels und/oder zum Ausblenden bzw. Zuschalten der Kraftstoffzufuhr zu einzelnen Zylindern des
:5 Verbrennungsmotors umzusetzen. Darüber hinaus ist aus der WO-A 95/24550 (US-Patent 5,692,471) zusätzlich die Beeinflussung des Kraftstoff-/Luftverhältnisses zur Realisierung des vorgegebenen Drehmomentenwertes bekannt. Ferner wird bei
:0 den bekannten Lösungen das Istmoment des Verbrennungsmotors unter Berücksichtigung der aktuellen Motoreinstellung (Füllung, Kraftstoffzumessung und Zündwinkel) berechnet. Dabei werden u.a. Motordrehzahl, Last (Luftmasse, Druck, etc.) und ggf. die Abgaszusammensetzung herangezogen.